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March 25, 1977

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ARIZONA ATTORNEY GENERAL

Honorable Peter Kay
Arizona State Representative
State Capitol
Phoenix, Arizona 85007

Re: 77-73 (R76-298)

Dear Representative Kay:

You have asked our advice whether the Secretary of State is required by law to accept supplemental filings within the period for filing nomination petitions.

The applicable statute, A.R.S. § 16-303.A. provides in pertinent part as follows:

"In addition to the nomination paper required, any candidate desiring to have his name printed on the official ballot, under the provisions of this article, to be used at any primary election shall, within the same time and with the same officer as provided by § 16-301, file a nomination petition"

A.R.S. § 16-601 contains a similar provision for filing of a "certificate of nomination" for candidates nominated other than by primary election.

Read literally, the requirement for filing "a nomination petition" might be construed to mean that the entire petition must be filed at one time. On the other hand, the phrase "nomination petition" is defined in subsection B. of § 16-303 as "the form or forms used for obtaining the required number of signatures of qualified electors, which is circulated by or on behalf of the person wishing to become a candidate for a political office." Read together, these statutory provisions do not, in our view, provide any clear directive whether supplemental filings must be accepted.

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In the absence of statutory directives, the manner in which a ministerial function is performed normally resides within the sound direction of the public official administering the law.

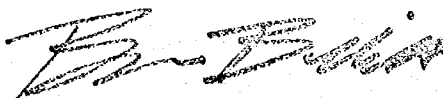
However, the Arizona Supreme Court has repeatedly held, in other factual contexts, that election laws should be generously construed to afford candidates the benefit of any reasonable doubt created by the statutes. See, Sims Printing Co. v. Frohmiller, 47 Ariz. 561, 571, 58 P.2d 518 (1936) ("The primary is in lieu of the old party convention for nominating candidates and should be, and we believe very generally is, liberally construed in favor of those of our citizens desiring to run for office."). Hunt v. Superior Court, 64 Ariz. 325, 170 P.2d 293 (1946) ("Substantial compliance with these sections gives the candidate the right to have his name appear on the ballot."). Adams v. Bolin, 77 Ariz. 316, 271 P.2d 472 (1954).

These cases, balancing the Secretary's administrative discretion with a directive that close questions should be resolved in favor of the candidate's right to be on the ballot, lead us to conclude that the Secretary would be well advised to accept, within reason, supplemental filings.

Since the statutes do not cover this point, it may be that a Court would view the matter differently and sustain the Secretary if he should in the future decline to accept supplemental filings. Accordingly, you may want to consider the matter as a subject for legislation.

Please let us know if we can be of further assistance.

Sincerely,



Bruce E. Babbitt
Attorney General

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